

LYNCHBURG CITY COUNCIL

Agenda Item Summary

MEETING DATE: **February 10, 2004**

AGENDA ITEM NO.: 8

CONSENT:

REGULAR: **X**

CLOSED SESSION:

(Confidential)

ACTION: **X**

INFORMATION:

ITEM TITLE: **Rezoning – 800 Middle Street, R-1 to R-3 (Conditional)**

RECOMMENDATION: Approval of the requested rezoning petition.

SUMMARY: Luther R. Shepard is petitioning to rezone approximately 3.892 acres located at 800 Middle Street from R-1, Single Family Residential District to R-3, Two-Family Residential District (Conditional) to allow the construction of five (5) duplexes. The Planning Division recommended approval of the rezoning because:

- Petition agrees with the *Comprehensive Plan* which recommends a Medium Density Residential use for the subject property.
- Petition would bring three (3) existing duplexes into conformity with the Zoning Ordinance.

PRIOR ACTION(S):

January 14, 2004: Planning Division recommended approval of the rezoning.
Planning Commission recommended approval 7-0 of the rezoning with the following voluntarily submitted proffers by the petitioner:

1. The owners agree that the five (5) new lots created for future development will be served by Lynchburg City sewer.
2. Owners agree to subdivide lots for three (3) existing duplexes in accordance with Lynchburg Code.
3. Owners agree that future construction will be substantially per the approved site plan.

FISCAL IMPACT: N/A

CONTACT(S):

Rachel Flynn / 455-3902

Tom Martin / 455-3909

ATTACHMENT(S):

- Ordinance
- PC Report
- PC minutes
- Site plan

REVIEWED BY: lkp

ORDINANCE

AN ORDINANCE CHANGING A CERTAIN AREA FROM AN R-1, SINGLE FAMILY RESIDENTIAL DISTRICT TO A R-3, TWO FAMILY RESIDENTIAL DISTRICT (CONDITIONAL).

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF LYNCHBURG That in order to promote the public necessity, convenience, general welfare, and good zoning practice that Chapter 35.1 of the Code of the City of Lynchburg, 1981, as amended, be and the same is hereby further amended by adding thereto Section 35.1-76.____, which section shall read as follows:

Section 35.1-76.____. Change of a certain area from R-1, Single Family Residential District to R-3, Two Family Residential District (Conditional).

The area embraced within the following boundaries . . .

Beginning at the intersection of Middle Street and McVeigh Road at the southwestern corner of said intersection at Tax Map No. 262-07-050, thence at an iron pin found S 08° 00' 00" W 725.28 feet to an iron pin found; thence N 62° 05' 00" W 265.21 feet to an iron pin found; thence N 08° 00' 00" E 634.93 feet to an iron pin found; thence S 82° 00' 00" E 249.35 feet to the point of beginning, being 3.892 acres.

. . . is hereby changed from a R-1, Single Family Residential District to a R-3, Two Family Residential District (Conditional), subject to the conditions setout hereinbelow which were voluntarily preferred in writing the owners, namely: Luther R. and Shirley P. Shepard, to wit:

1. Owners agree that the five new lots created for future development will be served by Lynchburg city sewer.
2. Owners agree to subdivide lots for the three existing duplexes in accordance with Lynchburg code.
3. Owners agree that future construction will be substantially per the approved site plan.

And the Director of Community Planning and Development shall forthwith cause the "Official Zoning Map of Lynchburg, Virginia," referred to in Section 35.1-4 of this Chapter to be amended in accordance therewith.

Adopted:

Certified:

Clerk of Council

014L

To: Planning Commission
From: Planning Division
Date: January 14, 2004
Re: **REZONING: R-1, Single-Family Residential, to R-3C, Two-Family Residential (Conditional), at 800 Middle Street.**

I. PETITIONER

Mr. Luther R. Shepard, 109 Twin Creek Terrace, Forest, VA 24551

Representative: Will Sigler, Berkley-Howell, 306 Enterprise Drive, Suite C, Forest, VA 24551

II. LOCATION

The subject property is a tract of about 3.892 acres located at the southwest corner of McVeigh Road and Middle Street. The property address is 800 Middle Street.

Property Owners: Luther R. and Shirley P. Shepard, 109 Twin Creek Terrace, Forest, VA 24551

III. PURPOSE

The purpose of this petition is to allow a rezoning from R-1, Single-Family Residential, to R-3C, Two-Family Residential (Conditional), to allow construction of five (5) duplexes in addition to the three (3) that are now on the property.

IV. SUMMARY

- Petition agrees with the Comprehensive Plan which designates this area as Medium Density Residential.
- Petition agrees with the Zoning Ordinance in that rezoning to an R-3, Two-Family Residential district will bring the three existing duplexes into conformance and will allow the construction of the five additional duplexes.

The Planning Division recommends approval of the rezoning petition.

V. FINDINGS OF FACT

1. **Comprehensive Plan.** The Lynchburg *Comprehensive Plan* recommends that this area be Medium Density Residential, which allows construction of up to 12 units per acre. The proposed project, when construction of the five additional duplexes is complete, would have 16 units on 3.892 acres, well within the limit.
2. **Zoning.** The subject property was annexed into the City in 1976. Prior to annexation, three duplexes were constructed and five additional ones were planned. With the adoption of the current Zoning Ordinance in 1978, the area was zoned R-1, Single-Family Residential. This rendered the three existing duplexes nonconforming and ended plans to construct the five remaining duplexes. Now that the City's Comprehensive Plan has designated this area as Medium Density Residential, the area may be rezoned to change the nonconforming status of the existing duplexes and allow construction of the additional five duplexes.
3. **Proffers.** The petitioner voluntarily submitted the following proffers with the rezoning application:
 - Owners agree that the five new lots created for future development will be served by Lynchburg city sewer.
 - Owners agree to subdivide lots for the three existing duplexes in accordance with Lynchburg code.
 - Owners agree that future construction will be substantially per the approved site plan.
4. **Board of Zoning Appeals (BZA).** The Zoning Official has determined that no variances will be needed for the proposed rezoning or construction of the new duplexes.
5. **Surrounding Area.** There have been several items requiring City Council approval in the immediate area:

5/14/95: CUP approved for a residential care center at Leesville Road/Del Ray Circle.

6/13/95: CUP approved for construction of a dining facility and additions at 693 Leesville Rd.

4/9/96: CUP approved for addition of a cottage and parking area for Bridges Treatment Center.

8/14/01: CUP approved for classrooms, parking, and a residential cottage at 693 Leesville Rd.

12/10/02: Cup approved for classrooms, cottages, and nature walk at 693 Leesville Rd.

8/13/91: Cup approved for sanctuary and parking lot at 742 Leesville Rd.

8/13/96: CUP approved for expansion of existing church facilities at 742 Leesville Rd.

12/11/01: CUP approved for master development plan for sanctuary, multipurpose building, parking, and athletic fields at 742 and 752 Leesville Rd.

6. **Site Description.** The subject property is bounded to the north, south, east and west by residential uses, primarily single-family homes, with some duplexes, an apartment complex, and a few mobile homes.
7. **Proposed Use of Property.** The purpose of the rezoning is to allow construction of five duplexes in addition to the three already on the property.
8. **Traffic and Parking.** The City Traffic Engineer has no comments of concern regarding the subject petition. The proposed use is not expected to generate a significant amount of traffic.
9. **Storm Water Management.** At the request of staff, the petitioner submitted preliminary stormwater calculations for the proposed subdivision. The calculations were requested to verify that a concerned neighbor would receive no additional runoff as a result of the proposed development. The petitioner's submittal confirms that no runoff from the newly proposed development will drain towards the neighbor's property. In addition, the calculations designate a broad swale at the west and a stream at the southwest portion of the property as adequate to convey non-erosive flows from the site with no negative downstream impacts.

In addition to water quantity, the petitioner proposes to address water quality through the use of "lawn landscape and non-impervious swales." Staff concurs with this method of addressing water quality for this land-use type, but recommend additional landscape beds to serve the dual purpose of aesthetics and a stormwater filter.

10. **Impact.** The five proposed duplexes will be one-story brick structures similar to the three now on the site. They will blend in well visually and functionally with the existing neighborhood.

The project proponent has agreed to provide City sewer service to at least the five new duplexes. Installation of the lines necessary to bring the sewer to those new duplexes will make sewer service available to the three existing duplexes (now on individual septic systems), as well as to other properties nearby.

The project proponent has also indicated that as much of the wooded area at the rear of the five new lots will be preserved as possible during construction. He has also indicated willingness to provide appropriate landscaping in front of the new duplexes.

The project proponent has also submitted a separate petition to resubdivide the 10 lots now shown on the one (1) tax parcel into 8 lots, one for each duplex, existing and proposed. This will bring the eight duplexes and their lots into conformance with the City's Subdivision Ordinance.

11. **Technical Review Committee.** The Technical Review Committee (TRC) reviewed the preliminary site plan on December 9, 2003. Comments related to the proposed use were minor in nature and have or will be addressed by the developer prior to final site plan approval.

VI. PLANNING DIVISION RECOMMENDATION

Based on the preceding Findings of Fact, the Planning Commission recommends to the City Council approval of the petition of Luther R. Shepard to rezone approximately 3.892 acres at 800 Middle Street from R-1, Single-Family Residential to R-3, Two-Family Residential (Conditional).

This matter is respectfully offered for your consideration.

William T. Martin, AICP
City Planner

pc: Mr. L. Kimball Payne, III, City Manager
Mr. Walter C. Erwin, City Attorney
Ms. Rachel O. Flynn, Director of Community Planning & Development
Mr. Bruce A. McNabb, Director of Public Works
Mr. R. Douglas DeJarnette, Fire Marshal
Ms. Judith C. Wiegand, Senior Planner
Mr. J. Lee Newland, Director of Engineering
Mr. Gerry L. Harter, Traffic Engineer
Mr. Karl Cooler, Building Commissioner
Mr. Arthur L. Tolley, Zoning Official
Mr. Robert S. Fowler, Zoning Official
Mr. Kent White, Environmental Planner
Mr. Luther Shepard, Petitioner

VII. ATTACHMENTS

- 1. Vicinity Zoning Pattern**
(see attached map)
- 2. Vicinity Proposed Land Use**
(see attached map)
- 3. Site Plan**
(see attached site plans)
- 4. Narrative**
(see attached narrative)

MINUTES FROM THE JANUARY 14, 2004 PLANNING COMMISSION MEETING

Petition of Luther and Shirley Shepard to rezone 3.892 acres at 800 Middle Street from R-1, Single-Family Residential District, to R-3, Two-Family Residential District (Conditional) to allow the construction of duplexes.

Mr. Martin explained that this request would allow the construction of five duplexes on the subject property. He added that the proposal as submitted was in compliance with the Comprehensive Plan, which recommended medium-density residential use for the property. He said the petitioner voluntarily proffered that the new duplexes would be served by City sewer and the existing duplexes would be brought into compliance with the City's Subdivision Ordinance. Additionally, he said, the petitioner had also proffered that the site would be developed in substantial compliance with the site plan with adequate landscaping in the form of street trees and foundation plantings. Mr. Martin said the City had received stormwater complaints from a neighboring property owner, and at the request of the Planning Division the petitioner submitted preliminary stormwater calculations for the property. He said those calculations show that all the drainage from the proposed duplexes would drain away from the area and should not contribute to the existing stormwater problem. He said the Planning Division recommends approval of this rezoning request.

Mr. Luther Shepard, 109 Twin Creek Terrace, Forest, Virginia, addressed the Planning Commission concerning this request. Mr. Shepard explained that he purchased this property in the early 1970's specifically for building duplexes. At that time, he said, the property was in Campbell County, and with the help of the neighbors they succeeded in having the county water system extended along the property. He said they built three duplexes before the City's annexation, which resulted in the property being rezoned R-1. He said in the City's new Comprehensive Plan it had been decided that duplexes would be appropriate at that site. Mr. Shepard told the Commission that he had either spoken to or left messages on answering machines of all of the neighbors within 200 feet of the site explaining his project. He said he had not received any negative comments concerning this request. He added that he did speak with the property owners who were concerned about the existing stormwater problem and explained that the engineering study indicated that there would be no stormwater impact from this project.

Mr. Walter Harlow, 1508 McVeigh Road, spoke in opposition to the petition. Mr. Harlow explained that he had already spoken to some City employees concerning the stormwater runoff at this site. He added that he had gotten no satisfaction, so he was at this meeting to find out who could assist him with this problem. He said Mr. Kim Payne, City Manager, did make a site visit to look at the problem. Mr. Harlow voiced his concern with the runoff from Leesville Road, McVeigh Road, and Middle Street all draining onto his property.

Commissioner Worthington asked if there was already a problem with drainage at Mr. Harlow's property would the runoff from the new development impact his property as well.

Mr. Ty Mosby, Berkley-Howell and Associates, said according to his calculations, the runoff from the new construction would flow away from Mr. Harlow's property.

Chair Dahlgren clarified that the stormwater problem Mr. Harlow was having was a problem the City would have to solve, and not a problem that would be worsened with the construction of Mr. Shepard's proposed duplexes.

Mr. Mosby confirmed that Chair Dahlgren's understanding was correct.

After discussion Commissioner Worthington made the following motion which was seconded by Commissioner Moore and passed by the following vote:

“That the Planning Commission recommends to the City Council approval of the petition of Luther R. Shepard to rezone approximately 3.892 acres at 800 Middle Street from R-1, Single-Family Residential to R-3, Two-Family Residential (Conditional).”

AYES: Dahlgren, Echols, Flint, Hamilton, Moore, Pulliam, Worthington	7
NOES:	0
ABSTENTIONS:	0

800 Middle Street
Vol. Map # 262-07-001
Rezoning Request from R-1 to R-3C
Petitioner: Luther Shepard

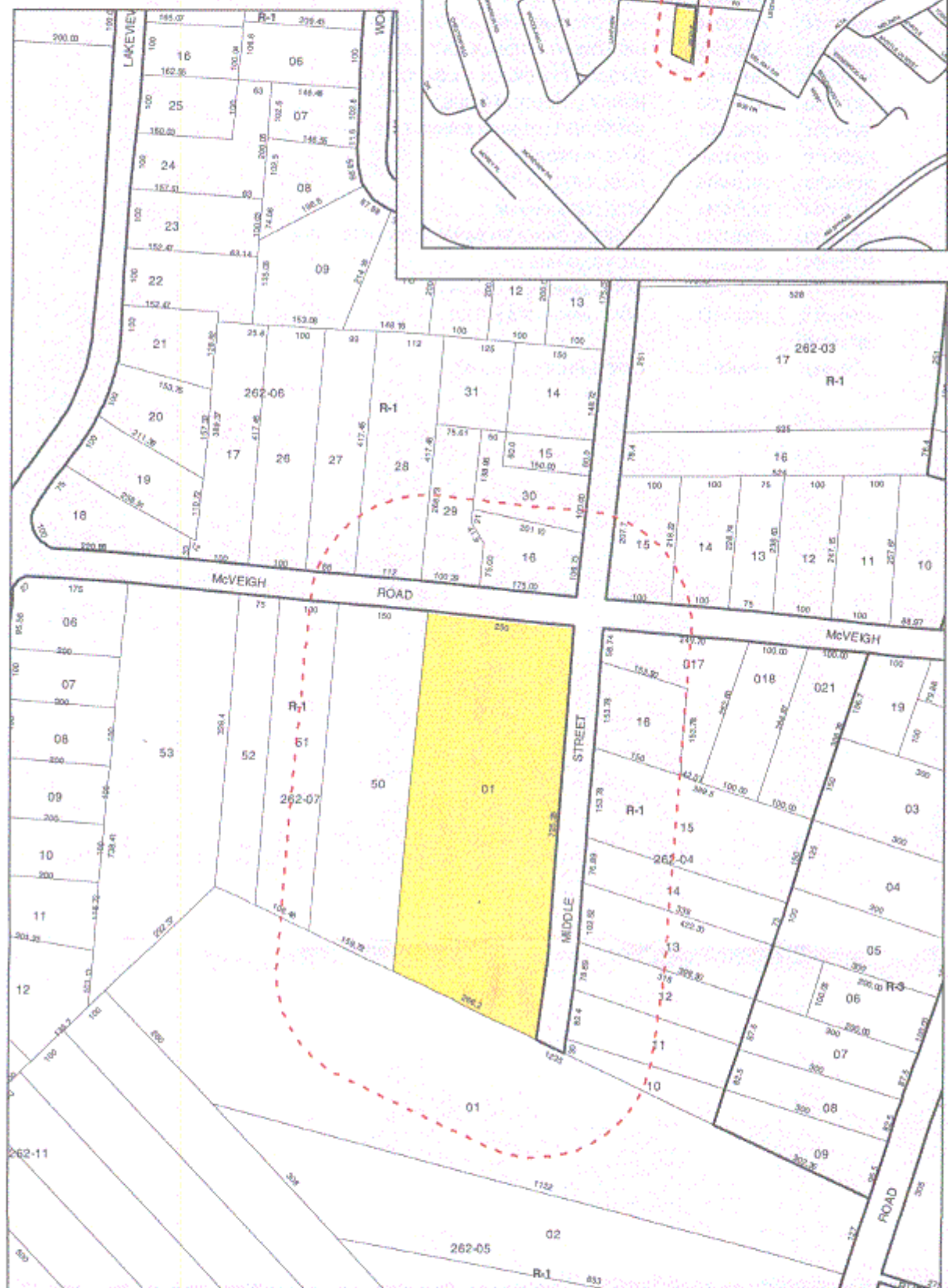
MAP PREPARED BY
THE DEPARTMENT OF COMMUNITY PLANNING & DEVELOPMENT

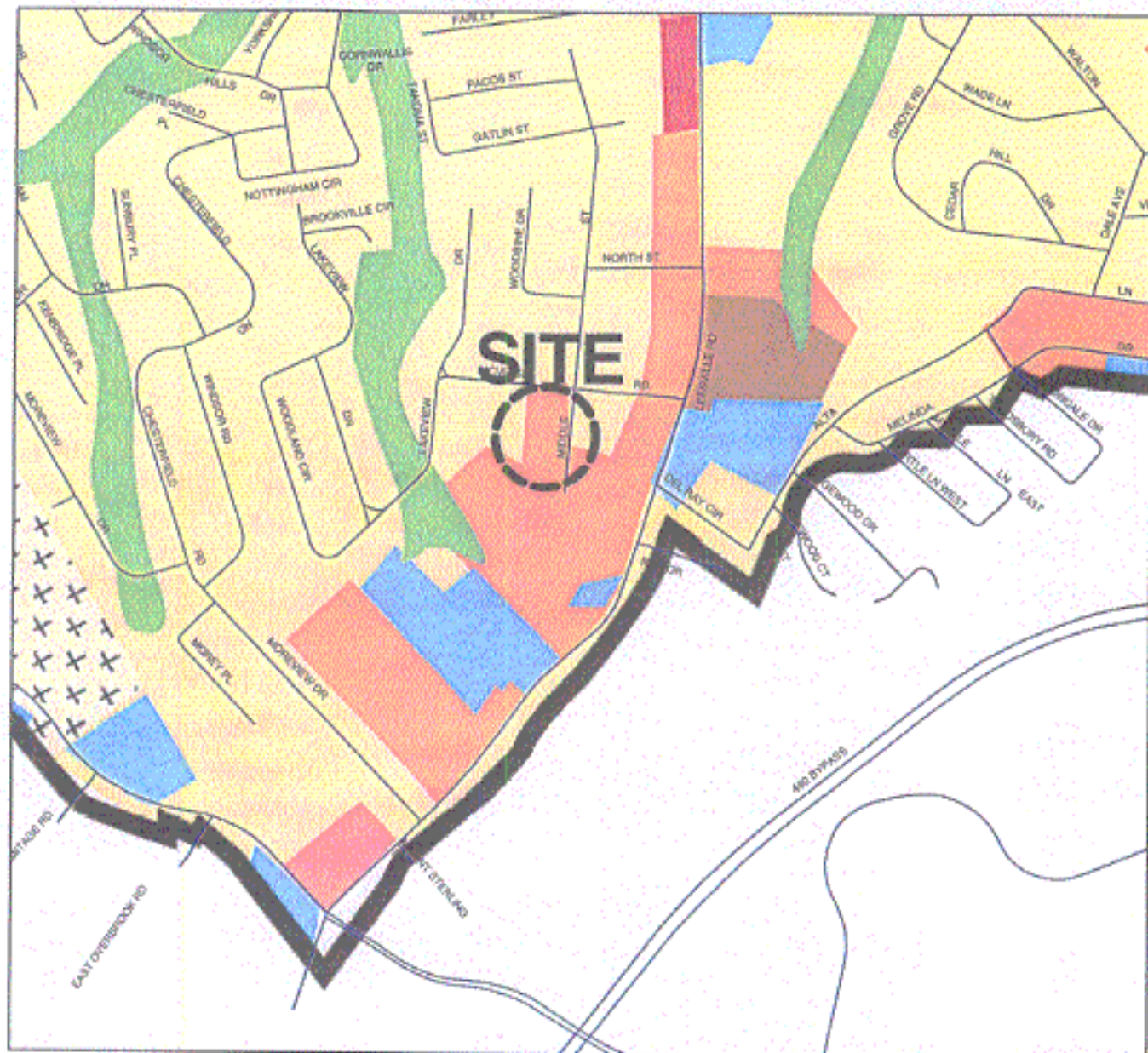


Subject Property

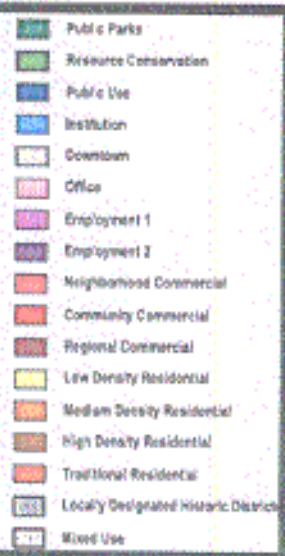
11

200 ft Radius





SHEPARD DUPLEXES 800 MIDDLE STREET LAND USE PLAN



PROJECT DESCRIPTION

12-19-03

RECEIVED
DEC 22 2003
PLANNING
& DEVELOPMENT

Project Number REZ0311-0001
Project Name McVeigh Subd Lots 217-226 Rezoning
Site Address 800 Middle St
Tax Number 262-07-01
Owners Luther R. and Shirley P. Shepard

- Land (3.892 acres) was purchased in 1971 for the specific purpose of building duplex apartments. At that time the property was located in Campbell County and duplex apartments were permitted.
- Owner and adjacent property owners paid to have Middle Street cleared, graded and paved to state requirements from McVeigh Road 725 feet south to dead end.
- Owner and adjacent property owners paid Campbell County Utilities and Services Authority to extend water lines over one thousand feet from the Dural Acres Subdivision south to the dead end of Middle Street.
- Electric Lines, Phone Lines and later Cable Lines were added.
- Adjacent property owners had full knowledge of the plans for subject property and were active in the street and utility development. Three of the planned eight duplexes were completed when annexation action was started by Lynchburg and following annexation the entire area was zoned R-1, bringing an end to the duplex construction. The property has always been used as R-3 in non conformance with city zoning.
- The area has mixed usage, one block east on Leesville Road is a large apartment complex (Burton Creek) and other apartments and commercial uses, on McVeigh Road are duplexes and one block west is a large apartment complex, and on the Middle Street area affected by this proposed change are mobile homes and duplexes.
- Over the past twenty-five years the city planning office was contacted on an informal basis several times and indicated that my plans were not in accordance with the comprehensive plan and would probably not be approved. Recently when this was discussed with the planning office I was told that the latest comprehensive plan called for Medium Density residential for the subject land, and since this would accommodate my zoning request, they recommended that my plans be submitted for review.
- The proposed eight lots are served by city water and at least the five lots for new construction will be served by city sewer.
- We believe that the zoning change, along with the proposed development will be a positive asset to the city, the community and to the owners.


Luther R. Shepard